

1 Beasley Wills, V30091
2 T.C.C.F M/A 08
3 415 U.S. HWY 49 North
4 Tutwiler, Ms 38963

FILED

SEP 5 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10
11 Beasley Wills Traverse
12 Points and Authorities
13 Vs,
14 D.K. Sisto (Warden) Case No: CV 07 6003 TEH (PR)
15 Respondent,
16

17
18 Petitioner Beasley Wills proceeding in pro per. Persent his
19 traverse to answer the respondents response to petitioner writ
20 of hebeas corbus, pursuant to the court order petitioner denies
21 as follow petitioner maintains that he is in custody of the
22 California Department of Corrections as result of a unconsit-
23 utional conviction out of Oakland Ca, Alameda County Superior
24 Court, Case #CV. 07 6003 TEH (PR). PEtitioners conviction
25 is inviolation of the laws and treaties of the United States
26 Petitioner contends that the petition is timely pursuant to
27 28 USC,section 2254 and recient rulings by the Ninth Circuit
28 Court of Appeals.

1 the united states supreme court antiterrorism and effective
2 death penalty act of 1996 pub.l.no.104.32.110.stat.1214 AEDPA ,

3 1.petitioner is in custody but denies his conviction is proper under the
4 custody of the california department of corrections pursuant to a invalid
5 judgement and felony conviction in oakland california alameda county
6 superior court case no.#cv.07.06003

7 2.petitioner admits and agree the petition filed on 11-28-07 appears
8 timely and is subject to the AEDPA.

9 3.petitioners petition is exhausted through the complete state level
10 appeal remedies on the first claimes on the first claims in grounds one
11 through four of the instant petition were presented in his california
12 petition for review and the second claimes one throgh four was
13 presented in a california supreme court habeas petition.

14 4.petitioner asserts totally and fully denies each and every allegation
15 claimed by respondent,as well as alleged by respondent. more over
16 petitioner denies respondent allegation that petitioners confinement
17 is not improper and petitioner realleges that his confinement is
18 is improper and that the judgement is improper and petitioner alleges
19 that the comitment underlying petitioners confinement is totally
20 improper and petitioner ALLEGES THAT THE COMMITMENT
UNDERLYING PETITIONER'S CONFINEMENT IS TOTALLY
21 IMPROPER AND ALLEGES THAT HIS RIGHTS WERE AND ARE
22 STILL BEING VIOLATED

24
25 petitioner Request the grantins of the present traverse

26 Bensley willis

27 SIGN Bensley willis

28 7-24-08

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	17

1 A R G U M E N T

2 THE TRIAL COURT EXCLUSION OF EVIDENCE

3 PRESENTED BY A QUALIFIED EXPERT ON THE

4 TOPIC OF FACTORS AFFECTING EYEWITNESS

5 IDENTIFICATION WAS PREJUDICIAL ERROR

6 *Violated Sixth and Fourteenth Amend*

7 RESPONDENT argues that the trial court properly excluded the
 8 testimony of identification expert robert shomer, claiming that
 9 the eyewitness identification were givin 'independent
 10 reliability' as theywere substantially corroborated by the
 11 custodial statement of informant eric delk whom was impeach by
 12 the district attorney on the stand. delks statement were elicited
 13 while he was in custody and it was undisputed that delks
 14 implicated appellant in the beacon robbery in the hope of
 15 obtaining leniency with regards to pending charges .information
 16 receaved from sources who are themselves the focus of pending
 17 criminal charges or unvestigations is inherently a suspect.

18 people v. campa (1984).36.cal.4d.870.882) as the opening brief
 19 noted, the prosecutor acknowledged that delk custodial statement,
 20 which delk repudiated at trial, was of dubious reliability and
 21 was introduced principally to explain why the police investigat-
 22 ion focused on appellant.

23 respondent fails to address appellants contention that bhel and
 24 garcia identification of appellant were unreliable in light of
 25 failure of either eyewitness to describe their assailant as
 26 having missing front top and bottom teeth petitioner cites.
 27 DEPENZA V. LANAUGH (5th cir.1998)874.f2d.211.220. finding iden
 28 following suggestive identification procedure unreliable in light

1 of victims failure to include in her discription of assailant
2 distinctive features including moustache and ''striking tattoos)
3 SE ALSO RAHEM V. KELLY(2nd cir 2001) 257.f.3d.122.138.139(prior
4 witness descriptions did not provide indicia of reliability were
5 unable to describe any distinctive facial features of perpetrator
6 nor dose respondent explain how delks testimony remedied this
7 infirmity in the identification testimony or render the identifi-
8 cattion '' indenpendently reliable.'' in light of the absense of
9 any physical evidence linkin appellant to the robbery and the
10 alibi testimony of dion jones ¹, the suspect and repudiated custo-
11 dial statement of eric delk was not of sufficient evidentiary
12 weight to give the identification the independent reliability
13 which would justify the exclusion of the expert identification
14 testimony.

15 ======
16 respondent contends that jones concedod that he wasn,t certain
17 that he was with appellant on the evening of the robbery .at
18 trial ,jones expressed no such uncertainty. while jones signed a
19 written statement prepared by prosecution investigator john-
20 williams which acknowledged uncertainty about the day he was with
21 appellant. jones did so under pressur from williams and because
22 he was embarrassed about being interviewed at his work place.
23 jones testified that he had repeatedly told williams he was
24 pretty sure of the date he was with appellant, butthat williams
25 tried to convince him other wise.

26 ======
27 respondent next argues that the trial court properly concluded
28 that giving caljic no.2.92 obviated the need for expert identifi-

1 identification testimony .as the opening brief, and writ of
 2 habeas corpus notes. the california suoreme court has reached a
 3 contrary conclusion in acknowledging that caljic no.2.92 is not
 4 not a substitute for expert identification testimony. citing
 5 people v. mcdonald (1984) respondent citing people v. johnson
 6 (1992)3.cal.4th.1126.suggest that the california supreme court has held that
 7 were caljic no.2.92 has been givin the trial court need not admit expert
 8 eyewitness identification testimony. contrary to respondent suggestion. that
 9 people v. johnson simply dose not address weather giving caljic no.2.92 just-
 10 1992, J 3, CAL.4TH, 1126.
 11 fies a trial court exclusion of expert identification testimony, because the
 12 trial court in johnson admitted the testimony of a denfence eyewitness
 13 identification expert . johnsons statements that caljic no.2.92 normaly
 14 provides sufficient guidence on the subject of eyewitness identification
 15 was made in rejecting a defence claim of instructional error in giving a
 16 modified version of of caljic no.2.92 in arguing that any error was harmless
 17 respondent contends that the california supreme court ^{HAS} ~~hsa~~ held that the
 18 watson ² state law harless error standard applies to claims of error in excl-
 19 uding eyewitness identification expert testimony, citing inter aliaby
 20 people v.sanders(1995)11.cal.4th.415.510) infact in sander the california
 21 supreme court decline to decide weather the exclusion of such evidence may
 22 violate a defendants sixth and fourteenth amendment rights.
 23 ======
 24 ² people v. watson(1956)46 CAL.2d.818.836
 25 ³ IN sander. the supreme court concluded that any claim of federal constitut-
 26 ional error was waived by the defendants failur to raise the federal constit-
 27 utional claim in the trial court (id.11. cal.4th.p.510.fn.3) SINCE SANDERS WAS
 28 DECIDED, the california supreme court has indicated a willingness to entertain
 constitutional claims on appeal even when the specific objection was not

1 RAISED in trial court people v. yeoman (2003) 31.cal.4th.93.117(yeoman) HERE
 2 while defence council did not expressly argue that the exclusion of THE
 3 DR.shomer testimony would violate appellants federal constitutional rights.
 4 she did argue that shomers testimony was needed'' in order for (appellant)
 5 to get a fair trial this was tantamount to a claim that exclusion of shomers
 6 thestimony would violate appellants due process rights. as the supreme court
 7 explained in(YEOMAN) no useful purpose is served by declining to consider
 8 on appeal a claim that merely restates under alternative legal
 9 principles . a claim otherwise identical to one that was properly
 10 preserved by a timely motion that called upon the trial court to
 11 consider the same facts and to apply a legal standard similar to that which
 12 would also determine the claim on appeal. see people v.benavides
 13 (2005) 35.cal 4th.69.91. yeoman in assuming the claim of feder-
 14 al constitutional error in damitting evidence was preserve for
 15 appeal, despite the fact the defendant had objected at trial on
 16 the basis the fact the the defendant had objected at trial on
 17 the basis the evidence was more prejudicial than probative).

18 A. APPELLANT reconize that as a general rule a trial court has
 19 wide discretion to admit or exclude expert testimony. however
 20 it is also true that a criminal defendant is consitutionally
 21 entitled to present all relevant evidence of significant
 22 probotive value in his faver...''people v. maeshall(1996)13.cal
 23 4th.799.836) SEE ALSO WEBB V.TEXAS(1972)409.us.95.98 washington
 24 v.texes(1967)388.us.14.19 davis v.alaska(1974)415.us.308.this
 25 standard of fairness has long been interpeted to require that
 26 criminal defendant be ''afforded a meangful opportunity to
 27 present a complete defence (california v.trombetta(1984) 467.us,
 28 479.485; crane v.kentucky(476.us.683.690)the trial courts exclus-
 ion of shomer testimomy violated appellants sixsixteenfourtheent —

1 six and fourteenth constitutional rights to present a complete
2 defence, as appellant has argued, shomers testimony was crucial
3 in a case that turned on the jurys assesment of the reliability
4 of the eyewitness identifications . in arguining that any error
5 was harmless,respondent contends that the defense was able to
6 impeach the identifications on cross- examination and to rely on
7 caljic no.2.92 in arguing that identifications were not reliable
8 (RB19) how ever neither the instructions nor crossexamination of
9 the witnesses substisuted for testimony specifying the factual
10 basis for a claime that psychological factors could have
11 effected the reliability of the indentifications. as the opening
12 brief and writ notes the prosecutor exploited the absense of ex-
13 pert testimony regarding factors which affected the reliability
14 of the identifications,arguing that the defense had failed to
15 introduce any evidence which cast doubt on behl and garcia test-
16 imony .(see aob 28.citing.3.rt.432.) THE PROSECUTOR WAS ABLE to
17 exploit the the exclusion of of shomers testimony to argue that
18 the cross-racial nature of the identification did not undermine
19 the reliability of the identification.(SEE AOB 29-30 citing 3 rt
20 426.427) AS THE CALIFORNIA SUPREME COURT HAS RECOGNIZED. EXPERT
21 TESTIMONY CAN INFORM THE JURY ABOUT EMPIRICAL STUDIES THAT HAVE
22 INDICATED SIGNIFICANT DIFFERENCE BETWEEN SAME RACE -other race
23 identification.(see people v. mcdonald supra 37.cal.3d.at.p.368
24 the exclusion ofshomer testimony also allowed the prosecutor to
25 argue that the stress the witness were underactually enhanced the
26 reliability of the identification.(see abo 28-29. citing 3rt .420.421.423.424
27 IN ABSENCE OF EXPERT TESTIMONY DEFENSE COUNCIL WAS UNABLE TO CITE ANY
28 EVIDENCE TO COUNTER THE PROSECUTIONS ARGUMENT THAT THERE WAS NO REASON TO

1 QUESTION the reliability of the identification testimony. as one federal
 2 district court reasoned. [I]n the absence of an expert, a defense lawyer...
 3 may try to argue that cross racial identification more problematic than
 4 identifications between members of the same race, or that stress may undermine
 5 the accuracy, but his voice necessarily lack the authority, of scientific
 6 studies ''an expert witness cites(UNITED STATES V. HINES(D.MASS.1995) 55.f.
 7 supp.2d.62.72.) UNITED STATES V.WADE(1967)388.us.218.288.875.ct.1926.1933.191
 8 ed.1149. in wade the court noted'' the high incidence of miscacciage of
 9 justice cause by such mistaken identifications and warned that the dangers
 10 for the suspect particularly grave when the witness has an opportunity for
 11 observation was insubstantial and thus his susceptibility to suggestion ~~the~~
 12 greatest (id.at.pp.228.229.875.ct.at.p.1933 distinguished federal judges have
 13 echoed and amplified these warnings.thus.in jackson v. fogg (2d.cr.1978.589.
 14 f2d .108. the courts upheld an order vacating a robbery-murder conviction on
 15 habeas corpus because prelineup were unduly suggestive and~~because~~ four eye
 16 witnesses had a brief opportunity to observe ~~the~~ gunman under stressful con
 17 ditions and showed varying degrees of uncertainty in there identification
 18 of the defendant. there was no other evidence connecting the defendant with
 19 the crime as in this case there is no fisical evidence linkin petitioner to
 20 this crime see priliminary hearing page 14-line 21 exzibit A MR. BHEAL
 21 the time he seen the perpetrator face he said one houndreth of a second an
 22 not 30 seconds like the DA EXPLOITED the time out to be an again in this case
 23 BHEAL tells the court at priliminary hearing he tells the court .10+15 seconds
 24 see page 28-line 22-25 exzibit B CITTING UNITED STATES V.RUSSRLL. 6th.
 25 cir.1976)532.f.2d.1063.1066) united states v. brown(d.c.cir.1972)146.f.21.134
 26 145.146) UNITED STATES V.SMITH(9th cir.1977)563.f2d.1361.1365) united states
 27 v.wade(1967)388.us.218.288.87.s.ct.1926.1933.18.1.ed2d.1149) there is a great
 28 potential for misidentification when a [*364]witness identifies a stranger

BASE soley upon a single brief observation and the risk is increased when the observation was made at a time of stress or excitement...[T]his danger is inherent in every identification of this kind. the testimony of a single witness is not sufficient to prove the identity is premised in part on the assumption that an eyewitness identification is generally reliable. yet judge HUFSTEDLER has declared that premise to be ''at best, highly dubious, givin th the extensive emoirical evidence that eyewitness identifications are not reliable(UNITED STATES V.SMITH(9 th cir.1977) 563.f2d.1361.1365(CONC). AND WITH HIS CHARACTRISTIC VIGOR,CHIEF JUDGE BAZELON HAS CALL ON THE COURTS TO FACE UP TO THE RELIABILITY PROBLEMS OF EYEWITNESS IDENTIFICATION TO INFORM THEM SELVES OF THE RESULTS OF SCIENTIFIC STUDIES OF THOSE PROBLEMS AND TO ALLOWjuries to that information in aid of their factfinding task. united states v. brown(DC.CIR.1972)461.f2d.134.145.146.fn.1 (CONC.DIS.OPN) FN.9 in THE the dozen tears since judge bazelon;s appeal empirical sthdies of the psychologicaL FACTORS AFFECTING EYEWITNESS IDENTIFICATION HAVE PROLIFERATED, ANDREPORTS OF THIER RESULTS HSVE APPEARED AT AN EVER-accelerating pace in the professional literature of the be haviral and social science.no less then five treaties on the topic have resently been published. citing and dicussing litter literally scores of studies on the pitfalls OF SUCH IDENTIFICATION.(**365)
(eyewitness testimony; psychological prespectives (WELL&loftus^{edits}1984)

US DISTRICT COURT
CLERK'S OFFICE

RECORDED AND INDEXED
SEARCHED AND SERIALIZED
MAY 10 2008 FILED JUN 04 2008
U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
PLAINTIFF: ROBERT R. BROWN, JR. v. DEFENDANT:
THE DISTRICT OF COLUMBIA, et al.
Case No. 08-cv-00557-TEH
Plaintiff's Motion for Preliminary Injunction
and/or TRO filed in the above case is granted.
The Plaintiff is granted preliminary injunction and temporary
restraining order against the Defendants, the District of Columbia,
the D.C. Mayor and Council, and the D.C. Office of the
Attorney General, to enjoin the Defendants from
enforcing the D.C. Board of Ethics and Conduct's
decision to disqualify Plaintiff from running
for Mayor of the District of Columbia. Plaintiff
is granted preliminary injunction and temporary
restraining order against the Defendants, the District of Columbia,
the D.C. Mayor and Council, and the D.C. Office of the
Attorney General, to enjoin the Defendants from
enforcing the D.C. Board of Ethics and Conduct's
decision to disqualify Plaintiff from running
for Mayor of the District of Columbia.

THAT FAILURE CONSTITUTED INEFFECTIVE ASSISTANCE.

Under both the constitution of the state of California and the United States Constitution Article VI Section 15, of the California Constitution, CRIMINAL DEFENDANTS ARE ENTITLED TO THE RIGHT TO COUNSEL OF COUNSEL, THE RIGHT OF WHICH IS NOT SUBJECT TO THE BIAS OF THE COURT, BUT IF THE ATTORNEY IS DEEMED STRICKLY VIOLATION [1980] 11 Cal. 45.668.669, 670, TO ESTABLISH A CLAIM THE COURT MUST INFER EFFECTIVE COUNSEL.

A PREJUDICE OF THE DEFENDANT THAT THE ATTORNEY'S COUNSEL'S PERFORMANCE WAS OBJECTIVELY UNREASONABLE. PEOPLE V. LEDSMAR, SUPRA, 43 CAL 3D AT P. 216-217] AN APPELLATE COURT'S REVIEW OF TRIAL COUNSEL'S PERFORMANCE IS A DEFERENTIAL ONE, [NYC COORDICIA [1985] 46 CAL 3D 161, 180] "HOWEVER, DEFERENTIAL SCRUTINY OF COUNSEL'S PERFORMANCE IS LIMITED IN EXTENT AND INDEED IN CERTAIN CASES MAY BE ALTOGETHER UNJUSTIFIED. DEFERENCE IS NOT ABSOLUTE; IT MUST NEVER BE USED TO INSULATE COUNSEL'S PERFORMANCE FROM MEANINGFUL SCRUTINY AND THEREBY AUTOMATICALLY VINDICATE CHALLENGED ACTS OF OMISSIONS."

PEOPLE V. BURNETT [1999] 71 CAL.RPT. 441, 151, 180, CITING IN RE CORDERO, SUPRA 46 CAL 3D 57 P. 161 [INTERNAL CITATIONS AND QUOTATIONS OMITTED]

IF THE RECORD ON APPEAL SHEETS NO LIGHT ON WHY COUNSEL ACTED OR FAILED TO ACT IN A PARTICULAR MANNER, A CLAIM OF INEFFECTIVE ASSISTANCE MUST BE REJECTED UNLESS COUNSEL WAS ASK FOR EXPLANATION AND PROVIDED IT. PROVIDED ONE OR THREE COULD BE NO SATISFACTORY EXPLANATION, [PEOPLE V. MONTARETTO [1977] 15 CAL 4TH 263, 266] HOW EFFECTIVE IT IS NOT GOVERNMENT PERMITS.

SHATIS TAKED. EXCLUDED FROM THE TRIAL BY DEFENDER & REVIEW COURT BUT REVERSE ON APPEAL ON THE GROUND OF DEFENDANT'S INEFFECTIVE [REDACTED] PEOPLE VICTIM'S TESTIMONY. 1983, 83-3574, p. 48 [reviewing case Trial Court excluded evidence of victim's prior statement to police, which was later admitted by defense counsel's attorney].
TRIAL COURT DID OBJECT TO DEFENDANT'S CRIIMINAL PROSECUTION TESTIMONY. IT IS CLEAR THAT DEFENDER WAS SEEKING THE EXCLUSION OF THIS EVIDENCE. THERE CAN BE NO JUSTIFICATION FOR FAILING TO OBJECT AT TRIAL. [REDACTED] OR THE PEOPLE SHOULD SIMPLY FOUNDATION FOR THE OPINION. ANY INEFFICIENT POSSIBILITY OF course that a more ENFORCABLE statement may have resulted in the People's Valedictory, SUPRA 13 CH. 3d p. 111-112, 684-685.]

1 THE COURT ERRED IN ADMITTING OPINION
 2 TESTIMONY REGARDING THE PROPENSITY OF USE
 3 TO COMMIT ROBBERIES VIOLATED PIITONERS
 4 VIOLATED SIXTH AND FOURTHEENTH A.M.E.D

5 APPELLANT argues below.JUDALLA"S opinion evidence regarding the criminal prop-
 6 ensity of drug user was inadmissibly,both because it was speculative and beca-
 7 use the testimony constituted highly prejudical,improper propensity evidence.
 8 the erroneous admission of the evidence requires reversal.regardless of the
 9 standard of prejudice which this court applies.to the extent that the claim of
 10 error has ben preserve for review that failure constituted ineffective assist-
 11 ance of counsel. JUDALLA"S investigation provide no foundation for a broader
 12 assertion that drug addicts are generally predisposed to commit robberies .
 13 there for ,the objection at teral that was sperulative was meritorious, and
 14 the trial court erred in failing to sustain that objection. more fundamente-
 15 lly,the propose of JUDALLA"S opinion constituted an improper attemp to estab-
 16 lish that appellants alleged drug addiction predisposed him to commit robberie
 17 EVIDENCE CODE SEC.1101 sub[a] explicity provides that evidence of a person
 18 character or a trait of his or her character [weather in the form of an open-
 19 ion,evidence of reputation,or evidence of reputation,or evidence of specfic
 20 instance of his or her conduct] is inadmissible when offered to prove his or
 21 her conduct on a specified occasion'' the rule excluding evidence of criminal
 22 propensity is nearly three cencuries old in common law. ESTELLE V.MAGUIRE[1991
 23 502.us,62.70]the erroneous admission of propensity evidence can render a trial
 24 fundamentally unfair in violation of due process because character evidence in
 25 the form of uncharge misconduct'' is said to weigh tomuch with the jury and
 26 so to overpersude them as to prejudge one with a general bad record and deny
 27 petitionre a fair opportunity to defendant against a particular charge.
 28 (MC KINNEY V.REES[9cir 1993)933.f3d.1378.1384. 1385.us const.amend.XIV)

XQ 11

1 PREJUDICE there for is assed under the chapman harmless beyond a
2 reasonable doubt standard.(SEEGARCEAU V.WOODFORD[9thcir,2001]275.
3 f3d.769 revd on other grounds sub.nom.WOODV.GARCIAU[2003]538.us.
4 202.(APPLYING CHAPMAN STANDARD WHERE INSTRUCTION PERMIT JORORS TO
5 TREATEVIDENCE OF UNCHARGE MISCONDUCT AS PROPENSITY EVIDENCE).
6 even if treated as solely state law error reasonable probable
7 that the error affected the out come below.propensity evidence is
8 deemed objectionable.notbecause it has no appreciable probative
9 value because it has to much,invitable,it temps the tribunal to
10 give execssive weihht to the vicious record of crime thus exhibi-
11 ted, and either to allow it to bear to strongly on the **present**
12 charges,orto take the proof of it sa justifying a condemnation
13 irrespective of guilt of the present charge.reviewing courts have
14 also ackowledge the inherent prejudice which attends the admissi-
15 on of evidence which connect a defendant with illegaldrug use
16 nothing that such evidence can have a catastrophic" impact on a
17 defendant chance of acquittal. PEOPLE V.DAVIS(1965)233.cal.app
18 2d.156.161] the danger is it tendency to incite a jury to resolve
19 the issue of guilt or innocence on defendants character rather
20 than on proof of the essential elements of the crime.the propen-
21 sity evidence here was particular prejudicial.because it was int-
22 troduce via the opinion of a police officer who was also involved
23 in the investigation of the robbery. where a government agentwho
24 testifies as an expert,on behahf of the prosecution,a serious
25 risk of undue prejudice exists.(UNITED STATES V.ALVAREZ(11thcir
26 1988)837.f2d. 1024.1030."if the expert witness was also an eye-
27 witness or other wise involed in the defendants arrest there is
28 a greater danger of unfair prejudice.this dual role may confuse

1 the jury, which may not understand its own function in evaluating
2 the evidence." UNITED STATES V. DOE (7 cir 1998) 149 f3d 634.637.
3 citing UNITED STATES V. FOSTER (7 th cir 1991) 939.2fd.445.452.453.
4 and UNITED STATES V. SOTO 7th cir 1989) 885.f2d.354.360.
5 the erroneous admission of that opinion testimony therefor was
6 prejudicial and requires reversal on all counts of conviction

7

8 THE CUMULATIVE IMPACT OF THE ERRORS IN
9 THIS CASE MANDATE REVERSAL

10

11 PETITIONER ABOUVE HAS SET FORTH TWO GRONDS FOR REVERSAL. EVEN IF
12 THESE ERRORS, CONSIDERED INDIVIDUALLY, DO NOT MANDATE REVERSAL, THEIR
13 THEIR CUMLATIVE IMPACC DENIED APPELLANT A FAIR TRIAL AND REVERSAL
14 IS WARRANTED ON THE BASIS (PEOPLE V. HILL(1998) 17 cal.4th 800.
15 844. united states v. fredrick(9th cir 1996) 78 f3d 1370)

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Bawley will

7-24-08

EXZIBIT

A

1 Q. So isn't it fair to say that you were focusing, you
2 were looking at that gun?

3 A. Yes. I was looking at the gun, too.

4 Q. Okay. And you were able to see that there were
5 holes in the cylinder. In other words, you were able to see
6 that there were not bullets in each one of those holes,
7 correct?

8 A. Because there was not movement when his hand goes
9 like this, and like I can see right through my eyes that
10 there is nothing. There might be a bullet right behind the
11 barrel, but there is nothing on the other sides.

12 Q. But of course you didn't want to take a chance?

13 A. No.

14 Q. Of course not. So you are saying at some point he
15 actually raised the gun so you could look through the
16 cylinder; is that right?

17 A. He might not do it intentionally, but when he was
18 asking for the money, yes, his hand goes up.

19 Q. All right. And at this point his gun was actually
20 in line with his face, about that level?

Witness 21 A. It was like you can say one hundredth of a second,
22 yeah, his hand goes that -- yeah, one hundredth of a second
23 it was even with his face. Yes.

24 Q. And then after that point what happened to the gun,
25 did he lower it again?

26 A. It come back, yeah. Because at that time I was
27 telling Lucio and his hand comes down and stays right here.

28 Q. Again, back to chest level?

EXZIBIT

B

1 face at the same time?

2 A. Yes.

3 Q. You were anxious not to stare at his face?

4 A. Excuse me?

5 Q. Let's rephrase that. Did you stare at his face,
6 look at him directly in the eye?

7 A. No. At that time I was scared.

8 Q. And you thought that staring at him in the face
9 might make him mad, right?

10 A. I couldn't recall that if I think that.

11 Q. Okay. So you weren't concerned about looking at him
12 in the face; is that what you are saying?

13 A. Can you repeat your question?

14 Q. Sure. Did he give this person with the gun, did he
15 try and avoid your looking at him in the face, did he turn
16 his head away and try and cover up?

17 A. No, he did not.

18 Q. Were you afraid to look at him in the eye?

19 A. No, I'm not.

20 Q. How many of the 20 to 25 seconds were you looking
21 directly at his face as opposed to the gun?

22 A. I can't say that.

23 Q. How many, less than ten?

24 A. Between ten to 15 seconds.

25 Q. Ten to 15 seconds. Now, during those ten to 15
26 seconds was there ever anything between you and him that
27 kept you from looking at him?

28 A. No.

PROOF OF SERVICE

Declaration Of Service By Mail

I, Beasley Wills, declare that I am over the age of eighteen (18) and that I am a party to this action. On JULY- 24, 2008, I deposited a copy of the following document(s): TRAVERSE

In a sealed envelope with postage prepaid into the United States mail outlet via authorized Tallahatchie County

Correctional employee at Tallahatchie County Correctional Institution 415 U.S. Highway 49 North, Tutwiler, Mississippi

38963, and addressed as follows:

United States District Court
Northern District of California
450 Golden Gate Ave
SAN FRANCISCO, CALIF
94102-3483

Department of Justice
Office of the Attorney General
455 Golden Gate Avenue
San Francisco, CA 94102-3664

I declare under penalty of perjury pursuant to 28 U.S.C. §1746, and State Laws, that the foregoing is true and correct and that this declaration was executed at Tallahatchie County Correctional Facility, 415 U.S. Highway 49 North, Tutwiler, Mississippi 38963

DATED: 7-24-08

Signature: Beasley Wills